

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PARKERSBURG DIVISION

DALE E. BRUM, individually, and on
behalf of all persons similarly situated,

Plaintiff,

v.

CIVIL ACTION NO. 6:04-cv-1014

STATE OF WEST VIRGINIA,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is the defendant's motion to dismiss (Docket # 15) filed on September 8, 2004. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). On June 16, 2005, the Magistrate Judge submitted her *Findings and Recommendation* wherein she recommended that the court grant the defendant's motion to dismiss pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

On July 5, 2005, the plaintiff filed objections to the Magistrate Judge's *Findings and Recommendation*. However, plaintiff's objections are based on a misapplication of 42 U.S.C. § 2000d-7, a statute which abrogates state sovereign immunity in cases brought under other federal statutes which prohibit discrimination by recipients of federal financial assistance. Yet, plaintiff has not alleged that he was discriminated against, nor has he indicated to the court any federal statute protecting him.

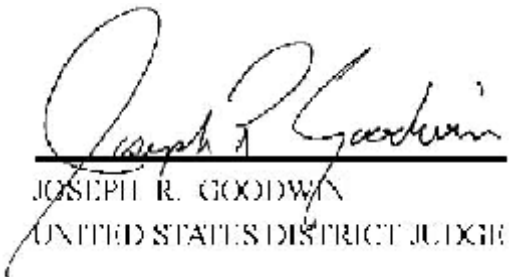
Thus, after *de novo* review, the court **FINDS** that the plaintiff's objections lack merit, and

ADOPTS the Magistrate Judge's findings regarding Eleventh Amendment state sovereign immunity.

Accordingly, the court **GRANTS** the defendant's motion to dismiss (Docket #15).

The court **DIRECTS** the Clerk to send a certified copy of this written opinion and order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: September 12, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE